

Official Journal

of the European Communities

ISSN 0378-6978

L 122

Volume 34

17 May 1991

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

- ★ **Council Regulation (EEC) No 1283/91 of 14 May 1991 extending the provisional anti-dumping duty on imports of small screen colour television receivers originating in Hong Kong and the People's Republic of China** 1
- ★ **Council Regulation (EEC) No 1284/91 of 14 May 1991 amending Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector** 2
- Commission Regulation (EEC) No 1285/91 of 16 May 1991 fixing the import levies on cereals and on wheat or rye flour, groats and meal 4
- Commission Regulation (EEC) No 1286/91 of 16 May 1991 fixing the premiums to be added to the import levies on cereals, flour and malt 6
- Commission Regulation (EEC) No 1287/91 of 16 May 1991 fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products 8
- ★ **Commission Regulation (EEC) No 1288/91 of 14 May 1991 concerning the classification of certain goods in the combined nomenclature** 11
- ★ **Commission Regulation (EEC) No 1289/91 of 15 May 1991 concerning the stopping of fishing for cod by vessels flying the flag of the United Kingdom** 13
- ★ **Commission Regulation (EEC) No 1290/91 of 16 May 1991 on the supply of skimmed-milk powder to Romania** 14
- Commission Regulation (EEC) No 1291/91 of 16 May 1991 fixing the export refunds on milk and milk products 15
- Commission Regulation (EEC) No 1292/91 of 16 May 1991 introducing a countervailing charge on tomatoes originating in Morocco 35

Contents (continued)

Commission Regulation (EEC) No 1293/91 of 16 May 1991 fixing the amount of the subsidy on oil seeds	37
Commission Regulation (EEC) No 1294/91 of 16 May 1991 altering the import levies on products processed from cereals and rice	40

II *Acts whose publication is not obligatory*

Council

91/250/EEC :

- * **Council Directive of 14 May 1991 on the legal protection of computer programs** 42
- * **Information concerning the date of entry into force of the Cooperation Agreement between the European Economic Community and the Republic of Chile** 47

Commission

91/251/EEC :

- * **Commission Decision of 12 April 1991 declaring the compatibility with the common market of a concentration (Case No IV/MO42 — Alcatel/Telettra) — Council Regulation (EEC) No 4064/89** 48

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1283/91

of 14 May 1991

extending the provisional anti-dumping duty on imports of small screen colour television receivers originating in Hong Kong and the People's Republic of China

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 11 thereof,

Having regard to the proposal from the Commission,

Whereas by Regulation (EEC) No 129/91⁽²⁾, the Commission imposed a provisional anti-dumping duty on imports of small screen colour television receivers originating in Hong Kong and the People's Republic of China;

Whereas the examination of the facts has not yet been completed and the Commission has informed exporters concerned in Hong Kong and the People's Republic of China of its intention to propose an extension of the

period of validity of the provisional duty for a further period not exceeding two months; whereas none of the exporters involved have objected,

HAS ADOPTED THIS REGULATION:

Article 1

The validity of the provisional anti-dumping duty on imports of small screen colour television receivers originating in Hong Kong and the People's Republic of China, imposed by Regulation (EEC) No 129/91, is hereby extended for a period not exceeding two months. This period of extension shall be limited by the entry into force of an act of the Council adopting definitive measures.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 May 1991.

For the Council

The President

J. F. POOS

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 14, 19. 1. 1991, p. 31.

COUNCIL REGULATION (EEC) No 1284/91

of 14 May 1991

amending Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Regulation (EEC) No 2342/90 of 24 July 1990 on fares for scheduled air services ⁽⁴⁾ and Regulation (EEC) No 2343/90 ⁽⁵⁾ concerning access to the market and the sharing of passenger capacity provide for further liberalization of the tariff system within the Community;

Whereas, while the Community air transport policy will enable carriers to compete on their merits and will thus contribute to a more dynamic industry in the interests of the air transport user, the Commission should be able to take prompt action in cases where air carriers engage in practices which are contrary to the competition rules and which may threaten the viability of services operated by a competitor or even the existence of an airline company and thus cause irreversible damage to the competitive structure;

Whereas it is appropriate to provide for a specific procedure according to which the Commission may apply the competition rules more promptly in cases where there is an urgent need to prevent, or act against, such anti-competitive practices;

Whereas this procedure should provide the undertakings concerned with the opportunity to comment in writing on the matters to which objection is taken;

Whereas it is therefore necessary to amend Regulation (EEC) No 3975/87 ⁽⁶⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3975/87 is hereby amended as follows:

1. The following Article shall be inserted:

Article 4a

Interim measures against anti-competitive practices

1. Without prejudice to the application of Article 4 (1), where the Commission has clear *prima facie* evidence that certain practices are contrary to Article 85 or 86 of the Treaty and have the object or effect of directly jeopardizing the existence of an air service, and where recourse to normal procedures may not be sufficient to protect the air service or the airline company concerned, it may by decision take interim measures to ensure that these practices are not implemented or cease to be implemented and give such instructions as are necessary to prevent the occurrence of these practices until a decision under Article 4 (1) is taken.

2. A decision taken pursuant to paragraph 1 shall apply for a period not exceeding six months. Article 8 (5) shall not apply.

The Commission may renew the initial decision, with or without modification, for a period not exceeding three months. In such case, Article 8 (5) shall apply.

2. The following shall be added to Article 13 (1):

'(e) to comply with any measure imposed by decision taken under Article 4a.'

3. In Article 16 (1) '4a,' shall be inserted after '4,'

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

⁽¹⁾ OJ No C 155, 26. 6. 1990, p. 7; and

OJ No C 101, 18. 4. 1991, p. 19.

⁽²⁾ OJ No C 48, 25. 2. 1991, p. 166.

⁽³⁾ OJ No C 41, 18. 2. 1991, p. 44.

⁽⁴⁾ OJ No L 217, 11. 8. 1990, p. 1.

⁽⁵⁾ OJ No L 217, 11. 8. 1990, p. 8.

⁽⁶⁾ OJ No L 374, 31. 12. 1987, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 May 1991.

For the Council

The President

J. F. POOS

COMMISSION REGULATION (EEC) No 1285/91

of 16 May 1991

fixing the import levies on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 3577/90 ⁽²⁾, and in particular Article 13 (5) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 533/91 ⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 15 May 1991;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 533/91 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 May 1991.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 59, 6. 3. 1991, p. 1.

ANNEX

to the Commission Regulation of 16 May 1991 fixing the import levies on cereals and on wheat or rye flour, groats and meal

CN code	Levy
0709 90 60	138,54 ⁽²⁾ ⁽³⁾
0712 90 19	138,54 ⁽²⁾ ⁽³⁾
1001 10 10	194,95 ⁽¹⁾ ⁽⁵⁾
1001 10 90	194,95 ⁽¹⁾ ⁽⁵⁾
1001 90 91	160,76
1001 90 99	160,76
1002 00 00	154,85 ⁽⁶⁾
1003 00 10	148,38
1003 00 90	148,38
1004 00 10	138,04
1004 00 90	138,04
1005 10 90	138,54 ⁽²⁾ ⁽³⁾
1005 90 00	138,54 ⁽²⁾ ⁽³⁾
1007 00 90	145,64 ⁽⁴⁾
1008 10 00	41,61
1008 20 00	135,79 ⁽⁴⁾
1008 30 00	51,25 ⁽⁷⁾
1008 90 10	⁽⁷⁾
1008 90 90	51,25
1101 00 00	239,76 ⁽⁸⁾
1102 10 00	231,49 ⁽⁸⁾
1103 11 10	315,81 ⁽⁸⁾
1103 11 90	257,12 ⁽⁸⁾

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

⁽²⁾ In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments, originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by ECU 1,81/tonne.

⁽⁴⁾ Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 (OJ No L 142, 9. 6. 1977, p. 10) and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22).

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

⁽⁸⁾ On importation into Portugal the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

COMMISSION REGULATION (EEC) No 1286/91

of 16 May 1991

fixing the premiums to be added to the import levies on cereals, flour and malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 3577/90 ⁽²⁾, and in particular Article 15 (6) thereof,Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 3845/90 ⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central

rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 15 May 1991;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 May 1991.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 367, 29. 12. 1990, p. 10.

ANNEX

to the Commission Regulation of 16 May 1991 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	Current	1st period	2nd period	3rd period
	5	6	7	8
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	1,32	1,32	1,32
1001 10 90	0	1,32	1,32	1,32
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

CN code	Current	1st period	2nd period	3rd period	4th period
	5	6	7	8	9
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 1287/91

of 16 May 1991

fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 16 (2) thereof,Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria⁽³⁾, as last amended by Regulation (EEC) No 728/91⁽⁴⁾, and in particular Article 5 thereof,Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco⁽⁵⁾, as last amended by Regulation (EEC) No 729/91⁽⁶⁾, and in particular Article 5 thereof,Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia⁽⁷⁾, as last amended by Regulation (EEC) No 413/86⁽⁸⁾, and in particular Article 5 thereof,Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey⁽⁹⁾, as last amended by Regulation (EEC) No 730/91⁽¹⁰⁾, and in particular Article 10 (2) thereof,Having regard to Council Regulation (EEC) No 1620/77 of 18 July 1977 laying down detailed rules for the importation of olive oil from Lebanon⁽¹¹⁾;Whereas by Regulation (EEC) No 3131/78⁽¹²⁾, as amended by the Act of Accession of Greece, the Commission decided to use the tendering procedure to fix levies on olive oil;

Whereas Article 3 of Council Regulation (EEC) No 2751/78 of 23 November 1978 laying down general rules for fixing the import levy on olive oil by tender⁽¹³⁾ specifies that the minimum levy rate shall be fixed for each of the products concerned on the basis of the situation on the world market and the Community market and of the levy rates indicated by tenderers;

Whereas, in the collection of the levy, account should be taken of the provisions in the Agreements between the Community and certain third countries; whereas in particular the levy applicable for those countries must be fixed, taking as a basis for calculation the levy to be collected on imports from the other third countries;

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 13 and 14 May 1991 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within 29 codes 0709 90 39 and 0711 20 90 and on products falling within CN codes 1522 00 31, 1522 00 39 and 2306 90 19 must be calculated from the minimum levy applicable on the olive oil contained in these products; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the imported product, such amount to be fixed at a standard rate; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum levies on olive oil imports are fixed in Annex I.

Article 2

The levies applicable on imports of other olive oil sector products are fixed in Annex II.

Article 3

This Regulation shall enter into force on 17 May 1991.

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 169, 28. 6. 1976, p. 24.

⁽⁴⁾ OJ No L 80, 27. 3. 1991, p. 1.

⁽⁵⁾ OJ No L 169, 28. 6. 1976, p. 43.

⁽⁶⁾ OJ No L 80, 27. 3. 1991, p. 2.

⁽⁷⁾ OJ No L 169, 28. 6. 1976, p. 9.

⁽⁸⁾ OJ No L 48, 26. 2. 1986, p. 1.

⁽⁹⁾ OJ No L 142, 9. 6. 1977, p. 10.

⁽¹⁰⁾ OJ No L 80, 27. 3. 1991, p. 3.

⁽¹¹⁾ OJ No L 181, 21. 7. 1977, p. 4.

⁽¹²⁾ OJ No L 370, 30. 12. 1978, p. 60.

⁽¹³⁾ OJ No L 331, 28. 11. 1978, p. 6.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

Minimum import levies on olive oil

(ECU/100 kg)

CN code	Non-member countries
1509 10 10	77,00 ⁽¹⁾
1509 10 90	77,00 ⁽¹⁾
1509 90 00	89,00 ⁽²⁾
1510 00 10	77,00 ⁽¹⁾
1510 00 90	122,00 ⁽²⁾

⁽¹⁾ For imports of oil falling within this CN code and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by :

- (a) Lebanon : ECU 0,60 per 100 kg ;
- (b) Tunisia : ECU 12,69 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force ;
- (c) Turkey : ECU 22,36 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force ;
- (d) Algeria and Morocco : ECU 24,78 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force.

⁽²⁾ For imports of oil falling within this CN code :

- (a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 3,86 per 100 kg ;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 3,09 per 100 kg.

⁽³⁾ For imports of oil falling within this CN code :

- (a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 7,25 per 100 kg ;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 5,80 per 100 kg.

ANNEX II

Import levies on other olive oil sector products

(ECU/100 kg)

CN code	Non-member countries
0709 90 39	16,94
0711 20 90	16,94
1522 00 31	38,50
1522 00 39	61,60
2306 90 19	6,16

COMMISSION REGULATION (EEC) No 1288/91**of 14 May 1991****concerning the classification of certain goods in the combined nomenclature**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ⁽¹⁾, as last amended by Regulation (EEC) No 1056/91 ⁽²⁾, and in particular Article 9 thereof,

Whereas, in order to ensure uniform application of the combined nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation;

Whereas Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the combined nomenclature and these rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivisions to it and which is established by specific Community provisions, with a view to the application of tariff or other measures relating to trade in goods;

Whereas, pursuant to the said general rules, the goods described in column 1 of the table annexed to the present

Regulation must be classified under the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Nomenclature Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the annexed table are now classified within the combined nomenclature under the appropriate CN codes indicated in column 2 of the said table.

Article 2

This Regulation shall enter into force on the 21st day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 May 1991.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽²⁾ OJ No L 107, 27. 4. 1991, p. 10.

ANNEX

Description of goods	CN code classification	Reasons
(1)	(2)	(3)
1. A small plate for an interchangeable tool, consisting of a compact layer of synthetic diamond permanently attached to a metal carbide substrate.	8207 90 10	Classification is determined by the provisions of general rules 1, 2 (a) and 6 of the combined nomenclature and the texts of CN codes 8207, 8207 90 and 8207 90 10. Having a working surface of synthetic diamond, these items cannot be classified in heading No 8209.
2. A colour monitor, capable of accepting a signal only from the central processing unit of an automatic data processing machine. The monitor is not capable of reproducing a colour image from a composite video signal.	8471 92 90	Classification is determined by the provisions of general rules 1 and 6 of the combined nomenclature, Note 5 B to Chapter 84 and the texts of CN codes 8471, 8471 92 and 8471 92 90.
3. Keyboard for an automatic data processing machine, in its own housing. This input unit does not have its own electrical supply and has to be attached, by its connecting cable, to the central processing unit of an automatic data processing machine to function.	8471 92 90	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature, by Note 5 B to Chapter 84 and by the wording of CN codes 8471, 8471 92 and 8471 92 90. (See also the HS Explanatory Notes to heading No 84.71).
4. Heating strips for self-regulation of the temperature of fluids, consisting of a copper conductor with a cross-section of 1,9 mm ² , a self-regulating conducting filament, a fluoropolymer insulating sleeve, a tinned copper braid with a cross-section of 2,8 mm ² and an outer fluoropolymer sleeve covering the braid. The heating strip varies the heating power at each point of the circuit with which it is associated depending upon the temperature it encounters. It is generally intended to be wrapped around piping.	8516 80 90	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 8516, 8516 80 and 8516 80 90.
5. Optical reading heads for compact disc players, consisting of a laser diode and a photodiode, contained in a metal housing with not more than 10 connecting pins.	8522 90 91	Classification is determined by the provisions of general rules 1 and 6 of the combined nomenclature and the text of CN codes 8522, 8522 90 and 8522 90 91. These optical reading heads are assemblies of diodes and as such cannot be classified in CN code 8541.
6. A disposable photographic camera, consisting of a plastic box measuring 98 × 58 × 35 mm, enclosing a sensitized 24-exposure 35 mm photographic film, having a lens, a shutter release, a viewfinder, an indicator of the number of exposures and a lever for winding on the film. The box cannot be reused after opening.	9006 53 00	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 9006 and 9006 53 00.
7. Apparatus known as 'chromatic tuners' having the following characteristics: It offers several tuning methods and two transposition functions adapted to a range of musical instruments; it incorporates a microphone, a quartz oscillator, a pointer-type frequency meter and light-emitting diodes, it may also incorporate a loudspeaker; it has a seven octave tuning range (from 32,7 to 395,1 Hz).	9209 10 00	Classification is determined by the provisions of general rules 1, 4 and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 9209 and 9209 10 00.

COMMISSION REGULATION (EEC) No 1289/91

of 15 May 1991

concerning the stopping of fishing for cod by vessels flying the flag of the United Kingdom

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities ⁽¹⁾, as amended by Regulation (EEC) No 3483/88 ⁽²⁾, and in particular Article 11 ⁽³⁾ thereof,Whereas Council Regulation (EEC) No 3926/90 of 20 December 1990 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1991 and certain conditions under which they may be fished ⁽⁴⁾, as amended by Regulation (EEC) No 793/91 ⁽⁵⁾, provides for cod quotas for 1991;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of cod in waters of ICES divi-

sion II b by vessels flying the flag of the United Kingdom or registered in the United Kingdom have reached the quota allocated for 1991,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of cod in the waters of ICES division II b by vessels flying the flag of the United Kingdom or registered in the United Kingdom are deemed to have exhausted the quota allocated to the United Kingdom for 1991.

Fishing for cod in the waters of ICES division II b by vessels flying the flag of the United Kingdom or registered in the United Kingdom is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of entry into force of this Regulation.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 May 1991.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 378, 31. 12. 1990, p. 1.

⁽⁴⁾ OJ No L 82, 28. 3. 1991, p. 2.

COMMISSION REGULATION (EEC) No 1290/91
of 16 May 1991
on the supply of skimmed-milk powder to Romania

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Commission Regulation (EEC) No 879/81 of 9 April 1991 laying down detailed rules for urgent action for the supply of butter and skimmed-milk powder to Bulgaria and Romania and amending Regulation (EEC) No 569/88 ⁽¹⁾, and in particular Article 3 (2) thereof,

Whereas, in accordance with Council Regulation (EEC) No 597/91 of 5 March 1991 on urgent action for the supply of agricultural and medical products intended for the people of Romania and Bulgaria ⁽²⁾, an invitation to tender was opened by Regulation (EEC) No 879/91 with a view to fixing the costs of the supply;

Whereas, in accordance with Article 3 (2) of Regulation (EEC) No 879/91 and in view of the tenders received, the Commission is to fix a maximum amount for supply costs or is to decide not to take any action in response to tenders; whereas, in view of the tenders submitted to, and notified by, the German intervention agency, a maximum amount should be fixed for the supply of skimmed-milk powder to Romania;

Whereas, owing to the need to inform tenderers as soon as possible of the outcome of their participation in the various invitations to tender, provision should be made for the entry into force of this Regulation on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

For the new invitation to tender opened pursuant to Regulation (EEC) No 879/91 and in view of the tenders forwarded to the Commission on 8 May 1991, the maximum price for the cost of the supply of 2 000 tonnes of skimmed-milk powder to Romania, shall be ECU 116,35 per tonne.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 89, 10. 4. 1991, p. 28.

⁽²⁾ OJ No L 67, 14. 3. 1991, p. 17.

COMMISSION REGULATION (EEC) No 1291/91

of 16 May 1991

fixing the export refunds on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

fixing regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 3641/90 ⁽²⁾, and in particular Article 17 (4) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 17 of Regulation (EEC) No 804/68 provides that the difference between prices in international trade for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Council Regulation (EEC) No 876/68 of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds ⁽³⁾, as last amended by Regulation (EEC) No 1344/86 ⁽⁴⁾, provides that when the refunds on the products listed in Article 1 of Regulation (EEC) No 804/68, exported in the natural state, are being fixed account must be taken of:

- the existing situation and the future trend with regard to prices and availabilities of milk and milk products on the Community market and prices for milk and milk products in international trade,
- marketing costs and the most favourable transport charges from Community markets to ports or other points of export in the Community, as well as costs incurred in placing the goods on the market of the country of destination,
- the aims of the common organization of the market in milk and milk products which are to ensure equilibrium and the natural development of prices and trade on this market,
- the need to avoid disturbances on the Community market, and

— the economic aspect of the proposed exports;

Whereas Article 3(1) of Regulation (EEC) No 876/68 provides that when prices within the Community are being determined account should be taken of the ruling prices which are most favourable for exportation, and that when prices in international trade are being determined particular account should be taken of:

- (a) prices ruling on third country markets;
- (b) the most favourable prices in third countries of destination for third country imports;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries; and
- (d) free-at-Community-frontier offer prices;

Whereas Article 4 of Regulation (EEC) No 876/68 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of Regulation (EEC) No 804/68 according to destination;

Whereas Article 5(1) of Regulation (EEC) No 876/68 provides that the list of products on which export refunds are granted and the amount of such refunds should be fixed at least once every four weeks; whereas the amount of the refund may, however, remain at the same level for more than four weeks;

Whereas, in accordance with Article 2 of Commission Regulation (EEC) No 1098/68 of 27 July 1968 on detailed rules for the application of export refunds on milk and milk products ⁽⁵⁾, as last amended by Regulation (EEC) No 2767/90 ⁽⁶⁾, the refund granted for milk products containing added sugar is equal to the sum of the two components, one of which is intended to take account of the quantity of milk products and the other is intended to take account of the quantity of added sucrose; whereas, however, the latter component is applied only if the added sucrose was produced from sugar beet or cane harvested in the Community;

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 362, 27. 12. 1990, p. 5.

⁽³⁾ OJ No L 155, 3. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 119, 8. 5. 1986, p. 36.

⁽⁵⁾ OJ No L 184, 29. 7. 1968, p. 10.

⁽⁶⁾ OJ No L 267, 29. 9. 1990, p. 14.

Whereas, for products falling within CN codes ex 0402 99 11, ex 0402 99 19, ex 0404 90 51, ex 0404 90 53, ex 0404 90 91 and ex 0404 90 93, with a fat content by weight not exceeding 9,5 % and a non-fatty milk content in the dry matter equal to or greater than 15 % by weight, the former abovementioned component is fixed for 100 kilograms of the whole product; whereas, for the other products containing added sugar falling within codes 0402 and 0404, that component is calculated by multiplying the basic amount by the milk products content of the product concerned; whereas that basic amount is equal to the refund to be fixed for one kilogram of milk products contained in the whole product;

Whereas the second component is calculated by multiplying the sucrose content of the product by the basic amount of the refund valid on the day of exportation for the products listed in Article 1 (1) (d) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 464/91⁽²⁾;

Whereas, if the refund system is to operate normally, refunds should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽³⁾, as last amended by Regulation (EEC) No 2205/90⁽⁴⁾,
- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas the level of refund for cheeses is calculated for products intended for direct consumption; whereas the cheese rinds and cheese wastes are not products intended

for this purpose; whereas, to avoid any confusion in interpretation, it should be specified that there will be no refund for cheeses of a free-at-frontier value less than ECU 140 per 100 kilograms;

Whereas Commission Regulation (EEC) No 896/84⁽⁵⁾, as last amended by Regulation (EEC) No 222/88⁽⁶⁾, laid down additional provisions concerning the granting of refunds on the change from one milk year to another; whereas those provisions provide for the possibility of varying refunds according to the date of manufacture of the products;

Whereas for the calculation of the refund for processed cheese provision must be made where casein or caseinates are added for that quantity not to be taken into account;

Whereas it follows from applying the rules set out above to the present situation on the market in milk and in particular to quotations or prices for milk products within the Community and on the world market that the refund should be as set out in the Annex to this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refunds referred to in Article 17 of Regulation (EEC) No 804/68 on products exported in the natural state shall be as set out in the Annex.
2. There shall be no refunds for exports to Zone E for products falling within CN codes 0401, 0402, 0403, 0404, 0405 and 2309.

Article 2

This Regulation shall enter into force on 17 May 1991.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 54, 28. 2. 1991, p. 22.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 91, 1. 4. 1984, p. 71.

⁽⁶⁾ OJ No L 28, 1. 2. 1988, p. 1.

ANNEX

to the Commission Regulation of 16 May 1991 fixing the export refunds on milk and milk products

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0401 10 10 000		6,36
0401 10 90 000		6,36
0401 20 11 100		6,36
0401 20 11 500		9,61
0401 20 19 100		6,36
0401 20 19 500		9,61
0401 20 91 100		12,65
0401 20 91 500		14,67
0401 20 99 100		12,65
0401 20 99 500		14,67
0401 30 11 100		18,72
0401 30 11 400		28,65
0401 30 11 700		42,84
0401 30 19 100		18,72
0401 30 19 400		28,65
0401 30 19 700		42,84
0401 30 31 100		50,94
0401 30 31 400		79,31
0401 30 31 700		87,41
0401 30 39 100		50,94
0401 30 39 400		79,31
0401 30 39 700		87,41
0401 30 91 100		99,57
0401 30 91 400		146,17
0401 30 91 700		170,49
0401 30 99 100		99,57
0401 30 99 400		146,17
0401 30 99 700		170,49
0402 10 11 000		70,00
0402 10 19 000		70,00
0402 10 91 000		0,7000
0402 10 99 000		0,7000
0402 21 11 200		70,00
0402 21 11 300		99,72
0402 21 11 500		106,00
0402 21 11 900		115,00
0402 21 17 000		70,00
0402 21 19 300		99,72
0402 21 19 500		106,00
0402 21 19 900		115,00
0402 21 91 100		115,96
0402 21 91 200		116,87
0402 21 91 300		118,53
0402 21 91 400		128,15
0402 21 91 500		131,43
0402 21 91 600		143,96
0402 21 91 700		151,51
0402 21 91 900		159,88
0402 21 99 100		115,96
0402 21 99 200		116,87
0402 21 99 300		118,53
0402 21 99 400		128,15
0402 21 99 500		131,43
0402 21 99 600		143,96
0402 21 99 700		151,51
0402 21 99 900		159,88

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0402 29 15 200		0,7000
0402 29 15 300		0,9972
0402 29 15 500		1,0600
0402 29 15 900		1,1500
0402 29 19 200		0,7000
0402 29 19 300		0,9972
0402 29 19 500		1,0600
0402 29 19 900		1,1500
0402 29 91 100		1,1596
0402 29 91 500		1,2815
0402 29 99 100		1,1596
0402 29 99 500		1,2815
0402 91 11 110		6,36
0402 91 11 120		12,65
0402 91 11 310		19,53
0402 91 11 350		24,42
0402 91 11 370		30,28
0402 91 19 110		6,36
0402 91 19 120		12,65
0402 91 19 310		19,53
0402 91 19 350		24,42
0402 91 19 370		30,28
0402 91 31 100		24,60
0402 91 31 300		35,78
0402 91 39 100		24,60
0402 91 39 300		35,78
0402 91 51 000		28,65
0402 91 59 000		28,65
0402 91 91 000		99,57
0402 91 99 000		99,57
0402 99 11 110		0,0636
0402 99 11 130		0,1265
0402 99 11 150		0,1967
0402 99 11 310		22,53
0402 99 11 330		27,52
0402 99 11 350		37,32
0402 99 19 110		0,0636
0402 99 19 130		0,1265
0402 99 19 150		0,1967
0402 99 19 310		22,53
0402 99 19 330		27,52
0402 99 19 350		37,32
0402 99 31 110		0,2663
0402 99 31 150		38,94
0402 99 31 300		0,5094
0402 99 31 500		0,8741
0402 99 39 110		0,2663
0402 99 39 150		38,94
0402 99 39 300		0,5094
0402 99 39 500		0,8741
0402 99 91 000		0,9957
0402 99 99 000		0,9957
0403 10 02 000		—
0403 10 04 200		—
0403 10 04 300		—
0403 10 04 500		—
0403 10 04 900		—
0403 10 06 000		—
0403 10 12 000		—
0403 10 14 200		—
0403 10 14 300		—

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (°)	Amount of refund
0403 10 14 500		—
0403 10 14 900		—
0403 10 16 000		—
0403 10 22 100		6,36
0403 10 22 300		9,61
0403 10 24 000		12,65
0403 10 26 000		18,72
0403 10 32 100		0,0636
0403 10 32 300		0,0961
0403 10 34 000		0,1265
0403 10 36 000		0,1872
0403 90 11 000		70,00
0403 90 13 200		70,00
0403 90 13 300		99,72
0403 90 13 500		106,00
0403 90 13 900		115,00
0403 90 19 000		115,96
0403 90 31 000		0,7000
0403 90 33 200		0,7000
0403 90 33 300		0,9972
0403 90 33 500		1,0600
0403 90 33 900		1,1500
0403 90 39 000		1,1596
0403 90 51 100		6,36
0403 90 51 300		9,61
0403 90 53 000		12,65
0403 90 59 110		18,72
0403 90 59 140		28,65
0403 90 59 170		42,84
0403 90 59 310		50,94
0403 90 59 340		79,31
0403 90 59 370		87,41
0403 90 59 510		99,57
0403 90 59 540		146,17
0403 90 59 570		170,49
0403 90 61 100		0,0636
0403 90 61 300		0,0961
0403 90 63 000		0,1265
0403 90 69 000		0,1872
0404 90 11 100		70,00
0404 90 11 910		6,36
0404 90 11 950		19,53
0404 90 13 120		70,00
0404 90 13 130		99,72
0404 90 13 140		106,00
0404 90 13 150		115,00
0404 90 13 911		6,36
0404 90 13 913		12,65
0404 90 13 915		18,72
0404 90 13 917		28,65
0404 90 13 919		42,84
0404 90 13 931		19,53
0404 90 13 933		24,42
0404 90 13 935		30,28
0404 90 13 937		35,78
0404 90 13 939		37,44
0404 90 19 110		115,96
0404 90 19 115		116,87
0404 90 19 120		118,53
0404 90 19 130		128,15
0404 90 19 135		131,43

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0404 90 19 150		143,96
0404 90 19 160		151,51
0404 90 19 180		159,88
0404 90 19 900		—
0404 90 31 100		70,00
0404 90 31 910		6,36
0404 90 31 950		19,53
0404 90 33 120		70,00
0404 90 33 130		99,72
0404 90 33 140		106,00
0404 90 33 150		115,00
0404 90 33 911		6,36
0404 90 33 913		12,65
0404 90 33 915		18,72
0404 90 33 917		28,65
0404 90 33 919		42,84
0404 90 33 931		19,53
0404 90 33 933		24,42
0404 90 33 935		30,28
0404 90 33 937		35,78
0404 90 33 939		37,44
0404 90 39 110		115,96
0404 90 39 115		116,87
0404 90 39 120		118,53
0404 90 39 130		128,15
0404 90 39 150		131,43
0404 90 39 900		—
0404 90 51 100		0,7000
0404 90 51 910		0,0636
0404 90 51 950		22,53
0404 90 53 110		0,7000
0404 90 53 130		0,9972
0404 90 53 150		1,0600
0404 90 53 170		1,1500
0404 90 53 911		0,0636
0404 90 53 913		0,1265
0404 90 53 915		0,1872
0404 90 53 917		0,2865
0404 90 53 919		0,4284
0404 90 53 931		22,53
0404 90 53 933		27,52
0404 90 53 935		37,32
0404 90 53 937		38,94
0404 90 53 939		—
0404 90 59 130		1,1596
0404 90 59 150		1,2815
0404 90 59 930		0,6107
0404 90 59 950		0,8741
0404 90 59 990		0,9957
0404 90 91 100		0,7000
0404 90 91 910		0,0636
0404 90 91 950		22,53
0404 90 93 110		0,7000
0404 90 93 130		0,9972
0404 90 93 150		1,0600

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0404 90 93 170		1,1500
0404 90 93 911		0,0636
0404 90 93 913		0,1265
0404 90 93 915		0,1872
0404 90 93 917		0,2865
0404 90 93 919		0,4284
0404 90 93 931		22,53
0404 90 93 933		27,52
0404 90 93 935		37,32
0404 90 93 937		38,94
0404 90 93 939		—
0404 90 99 130		1,1596
0404 90 99 150		1,2815
0404 90 99 930		0,6107
0404 90 99 950		0,8741
0404 90 99 990		0,9957
0405 00 10 100		—
0405 00 10 200		124,76
0405 00 10 300		156,95
0405 00 10 500		160,98
0405 00 10 700	056	198,00 (*)
	...	165,00
0405 00 90 100		165,00
0405 00 90 900		213,00
0406 10 10 000		—
0406 10 90 000		—
0406 20 90 100		—
0406 20 90 913	028	—
	032	—
	400	87,74
	404	—
	...	84,94
0406 20 90 915	028	—
	032	—
	400	116,99
	404	—
	...	113,25
0406 20 90 917	028	—
	032	—
	400	124,30
	404	—
	...	120,33
0406 20 90 919	028	—
	032	—
	400	138,92
	404	—
	...	134,49
0406 20 90 990		—
0406 30 10 100		—
0406 30 10 150	028	—
	032	—
	036	—
	038	—
	400	20,03
	404	—
	...	22,83

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 30 10 200	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 10 250	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 10 300	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	—
	...	71,42
0406 30 10 350	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 10 400	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	—
	...	71,42
0406 30 10 450	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 10 500		—
0406 30 10 550	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	20,00
	...	48,68

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (°)	Amount of refund
0406 30 10 600	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	28,00
	...	71,42
0406 30 10 650	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 10 700	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 10 750	028	—
	032	—
	036	—
	038	—
	400	113,54
	404	—
	...	126,87
0406 30 10 800	028	—
	032	—
	036	—
	038	—
	400	113,54
	404	—
	...	126,87
0406 30 10 900		—
0406 30 31 100		—
0406 30 31 300	028	—
	032	—
	036	—
	038	—
	400	20,03
	404	—
	...	22,83
0406 30 31 500	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 30 31 710	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 31 730	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	—
	...	71,42
0406 30 31 910	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 31 930	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	—
	...	71,42
0406 30 31 950	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 39 100		—
0406 30 39 300	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	20,00
	...	48,68
0406 30 39 500	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	28,00
	...	71,42

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 30 39 700	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 39 930	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 39 950	028	—
	032	—
	036	—
	038	—
	400	113,54
	404	—
	...	126,87
0406 30 90 000	028	—
	032	—
	036	—
	038	—
	400	113,54
	404	—
	...	126,87
0406 40 00 100	028	—
0406 40 00 900	032	—
	038	—
	400	120,00
	404	—
	...	126,51
	028	—
0406 90 13 000	032	—
	036	—
	038	—
	400	113,00
	404	—
	...	159,34
	028	—
0406 90 15 100	032	—
	036	—
	038	—
	400	113,00
	404	—
	...	159,34
0406 90 15 900	028	—
	...	—

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 17 100	028	—
	032	—
	036	—
	038	—
	400	113,00
	404	—
	...	159,34
0406 90 17 900		—
0406 90 21 100		—
0406 90 21 900	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	732	139,68
	...	151,68
0406 90 23 100		—
0406 90 23 900	028	—
	032	—
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 25 100		—
0406 90 25 900	028	—
	032	—
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 27 100		—
0406 90 27 900	028	—
	032	—
	036	—
	038	—
	400	56,14
	404	—
	...	114,71
0406 90 31 111		—
0406 90 31 119	028	—
	032	—
	036	—
	038	15,00
	400	62,48
	404	16,00
	...	89,96

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 31 151	028	—
	032	—
	036	—
	038	—
	400	58,40
	404	14,96
	...	83,83
0406 90 31 159		—
0406 90 31 900		—
0406 90 33 111		—
0406 90 33 119	028	—
	032	—
	036	—
	038	15,00
	400	62,48
	404	16,00
	...	89,96
0406 90 33 151	028	—
	032	—
	036	—
	038	—
	400	58,40
	404	14,96
	...	83,83
0406 90 33 159		—
0406 90 33 911		—
0406 90 33 919	028	—
	032	—
	036	—
	038	15,00
	400	62,48
	404	16,00
	...	89,96
0406 90 33 951	028	—
	032	—
	036	—
	038	—
	400	58,40
	404	14,96
	...	83,83
0406 90 33 959		—
0406 90 35 110		—
0406 90 35 190	028	—
	032	—
	036	42,66
	400	160,00
	404	90,00
	...	158,54

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 35 910		—
0406 90 35 990	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00
0406 90 61 000	028	—
	032	—
	036	90,00
	400	190,00
	404	140,00
	...	185,00
0406 90 63 100	028	—
	032	—
	036	105,03
	400	220,00
	404	160,00
	...	212,12
0406 90 63 900	028	—
	032	—
	036	70,00
	400	150,00
	404	80,00
	...	165,00
0406 90 69 100		—
0406 90 69 910	028	—
	032	—
	036	70,00
	400	150,00
	404	80,00
	...	165,00
0406 90 69 990		—
0406 90 71 100		—
0406 90 71 930	028	13,50
	032	13,50
	036	—
	038	—
	400	87,23
	404	—
	...	89,49

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 71 950	028	20,00
	032	20,00
	036	—
	038	—
	400	96,18
	404	—
	...	98,13
0406 90 71 970	028	24,00
	032	24,00
	036	—
	038	—
	400	109,31
	404	—
	...	110,79
0406 90 71 991	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00
0406 90 71 995	028	27,50
	032	27,50
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 71 999		—
0406 90 73 100		—
0406 90 73 900	028	—
	032	—
	036	42,66
	400	160,00
	404	120,00
	...	151,00
0406 90 75 100		—
0406 90 75 900	028	—
	032	—
	036	—
	400	65,00
	404	—
	...	125,96
0406 90 77 100	028	24,00
	032	24,00
	036	—
	038	—
	400	58,77
	404	—
	...	110,79

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 77 300	028	—
	032	—
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 77 500	028	—
	032	—
	036	—
	038	—
	400	75,00
	404	—
	...	135,35
0406 90 79 100		—
0406 90 79 900	028	—
	032	—
	036	—
	038	—
	400	56,14
	404	—
	...	114,71
0406 90 81 100		—
0406 90 81 900	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00
0406 90 83 100		—
0406 90 83 910		—
0406 90 83 950	028	—
	032	—
	400	39,03
	404	—
	...	47,97
0406 90 83 990	028	—
	032	—
	400	39,03
	404	—
	...	47,97
0406 90 85 100		—
0406 90 85 910	028	—
	032	—
	036	42,67
	400	160,00
	404	90,00
	...	158,54

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (°)	Amount of refund
0406 90 85 991	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00
0406 90 85 995	028	27,50
	032	27,50
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 85 999		—
0406 90 89 100	028	13,50
	032	13,50
	036	—
	038	—
	400	87,23
	404	—
	...	89,49
0406 90 89 200	028	20,00
	032	20,00
	036	—
	038	—
	400	96,18
	404	—
	...	98,13
0406 90 89 300	028	24,00
	032	24,00
	036	—
	038	—
	400	109,31
	404	—
	...	110,79
0406 90 89 910		—
0406 90 89 951	028	—
	032	—
	036	42,66
	400	160,00
	404	90,00
	...	151,00
0406 90 89 959	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 89 971	028	27,50
	032	27,50
	036	—
	038	—
	400	74,00
	404	—
	...	135,35
0406 90 89 972	028	—
	032	—
	400	39,03
	404	—
	...	47,97
0406 90 89 979	028	27,50
	032	27,50
	036	—
	038	—
	400	74,00
	404	—
	...	135,35
0406 90 89 990		—
0406 90 91 100		—
0406 90 91 300	028	—
	032	—
	036	—
	038	—
	400	21,46
	404	—
	...	21,06
0406 90 91 510	028	—
	032	—
	036	—
	038	—
	400	37,62
	404	—
	...	35,97
0406 90 91 550	028	—
	032	—
	036	—
	038	—
	400	45,81
	404	—
	...	43,62
0406 90 91 900		—
0406 90 93 000		—
0406 90 97 000		—
0406 90 99 000		—
2309 10 15 010		—
2309 10 15 100		—
2309 10 15 200		1,50
2309 10 15 300		2,00
2309 10 15 400		2,50
2309 10 15 500		3,00
2309 10 15 700		3,50

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
2309 10 15 900		—
2309 10 19 010		—
2309 10 19 100		—
2309 10 19 200		1,50
2309 10 19 300		2,00
2309 10 19 400		2,50
2309 10 19 500		3,00
2309 10 19 600		3,50
2309 10 19 700		3,75
2309 10 19 800		4,00
2309 10 19 900		—
2309 10 70 010		—
2309 10 70 100		21,00
2309 10 70 200		28,00
2309 10 70 300		35,00
2309 10 70 500		42,00
2309 10 70 600		49,00
2309 10 70 700		56,00
2309 10 70 800		61,60
2309 10 70 900		—
2309 90 35 010		—
2309 90 35 100		—
2309 90 35 200		1,50
2309 90 35 300		2,00
2309 90 35 400		2,50
2309 90 35 500		3,00
2309 90 35 700		3,50
2309 90 35 900		—
2309 90 39 010		—
2309 90 39 100		—
2309 90 39 200		1,50
2309 90 39 300		2,00
2309 90 39 400		2,50
2309 90 39 500		3,00
2309 90 39 600		3,50
2309 90 39 700		3,75
2309 90 39 800		4,00
2309 90 39 900		—
2309 90 70 010		—
2309 90 70 100		21,00
2309 90 70 200		28,00
2309 90 70 300		35,00
2309 90 70 500		42,00
2309 90 70 600		49,00
2309 90 70 700		56,00
2309 90 70 800		61,60
2309 90 70 900		—

(¹) The code numbers for the destinations are those set out in the Annex to Commission Regulation (EEC) No 91/91 (OJ No L 11, 16. 1. 1991, p. 5).

For destinations other than those indicated for each 'product code', the amount of the refund applying is indicated by ***.

Where no destination is indicated, the amount of the refund is applicable for exports to any destination other than those referred to in Article 1 (2).

(²) This amount shall not apply to butter exported pursuant to Commission Regulations (EEC) No 3775/90 (OJ No L 364, 28. 12. 1990, p. 2), for which the refund applicable is that fixed for the other destinations.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1).

COMMISSION REGULATION (EEC) No 1292/91

of 16 May 1991

introducing a countervailing charge on tomatoes originating in Morocco

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 3920/90⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Article 25 (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a third country remains at least ECU 0,6 below the reference price for two consecutive market days, a countervailing charge must be introduced in respect of the exporting country concerned, save in exceptional circumstances; whereas this charge is equal to the difference between the reference price and the arithmetic mean of the last two entry prices available for that exporting country;

Whereas Commission Regulation (EEC) No 802/91 of 27 March 1991 fixing for the 1991 marketing year the reference prices for tomatoes⁽³⁾ fixed the reference price for products of class I at ECU 136,75 per 100 kilograms net for the month of May 1991;

Whereas the entry price for a given exporting country is equal to the lowest representative prices recorded for at least 30 % of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available less the duties and the charges indicated in Article 24 (3) of Regulation (EEC) No 1035/72, the provisions of Regulation (EEC) No 773/90 of the Commission of 29 March 1990, altering the entry price of tomatoes originating in Morocco and the Canary Islands⁽⁴⁾ being applicable; whereas the meaning of representative price is defined in Article 24 (2) of Regulation (EEC) No 1035/72;

Whereas, in accordance with Article 3 (1) of Commission Regulation (EEC) No 2118/74⁽⁵⁾, as last amended by

Regulation (EEC) No 3811/85⁽⁶⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets; whereas it is necessary to multiply the prices with the coefficient fixed in the second indent of Article 1 (2) of Regulation (EEC) No 802/91;

Whereas, for tomatoes originating in Morocco the entry price calculated in this way has remained at least ECU 0,6 below the reference price for two consecutive market days; whereas a countervailing charge should therefore be introduced for these tomatoes;

Whereas, if the system is to operate normally, the entry price should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽⁷⁾, as last amended by Regulation No 2205/90⁽⁸⁾,
- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of ECU 24,41 per 100 kilograms net is applied to tomatoes (CN code 0702 00) originating in Morocco.

Article 2

This Regulation shall enter into force on 18 May 1991.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 375, 31. 12. 1990, p. 17.

⁽³⁾ OJ No L 82, 28. 3. 1991, p. 33.

⁽⁴⁾ OJ No L 83, 30. 3. 1990, p. 82.

⁽⁵⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁶⁾ OJ No L 368, 31. 12. 1985, p. 1.

⁽⁷⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁸⁾ OJ No L 201, 31. 7. 1990, p. 9.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 1293/91

of 16 May 1991

fixing the amount of the subsidy on oil seeds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 27 (4) thereof,

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture⁽³⁾, as last amended by Regulation (EEC) No 1232/91⁽⁴⁾,

Having regard to Council Regulation (EEC) No 1569/72 of 20 July 1972 laying down special measures for colza, rape and sunflower seed⁽⁵⁾, as last amended by Regulation (EEC) No 2206/90⁽⁶⁾, and in particular Article 2 (3) thereof,

Having regard to the opinion of the Monetary Committee,
Whereas the amount of the subsidy referred to in Article 27 of Regulation No 136/66/EEC was fixed by Commission Regulation (EEC) No 772/91⁽⁷⁾, as last amended by Regulation (EEC) No 1249/91⁽⁸⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 772/91 to the information known to the Commission that the amount of the subsidy at present in force should be altered to the amount set out in the Annexes hereto,

HAS ADOPTED THIS REGULATION:

Article 1

1. The amounts of the subsidy and the exchange rates referred to in Article 33 (2) and (3) of Commission Regulation (EEC) No 2681/83⁽⁹⁾ shall be as set out in the Annexes hereto.

2. However, the amount of the aid fixed in advance for the 1991/92 marketing year for colza, rape and sunflower seed shall be confirmed or replaced with effect from 17 May 1991 to take account of the prices and related measures for the 1991/92 marketing year and of the consequences of the maximum guaranteed quantity arrangements.

Article 2

This Regulation shall enter into force on 17 May 1991.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 11.

⁽⁴⁾ OJ No L 118, 13. 5. 1991, p. 53.

⁽⁵⁾ OJ No L 167, 25. 7. 1972, p. 9.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 11.

⁽⁷⁾ OJ No L 81, 28. 3. 1991, p. 62.

⁽⁸⁾ OJ No L 119, 14. 5. 1991, p. 31.

⁽⁹⁾ OJ No L 266, 28. 9. 1983, p. 1.

ANNEX I

Aids to colza and rape seed other than 'double zero'

(amounts per 100 kg)

	Current 5	1st period 6	2nd period 7 (1)	3rd period 8 (1)	4th period 9 (1)	5th period 10 (1)
1. Gross aids (ECU):						
— Spain	0,000	0,000	9,506	9,750	9,750	9,750
— Portugal	26,408	26,676	16,476	16,720	16,720	16,720
— Other Member States	19,438	19,706	9,506	9,750	9,750	9,750
2. Final aids:						
Seed harvested and processed in:						
— Federal Republic of Germany (DM)	45,76	46,39	22,38	22,95	22,95	22,95
— Netherlands (Fl)	51,56	52,27	25,22	25,86	25,86	25,86
— BLEU (Bfrs/Lfrs)	943,84	956,85	461,58	473,42	473,42	473,42
— France (FF)	153,48	155,59	75,06	76,98	76,98	76,98
— Denmark (Dkr)	174,55	176,96	85,36	87,55	87,55	87,55
— Ireland (£ Irl)	17,082	17,317	8,354	8,568	8,568	8,568
— United Kingdom (£)	14,932	15,145	7,124	7,318	7,318	7,311
— Italy (Lit)	34 239	34 711	16 744	17 174	17 174	17 111
— Greece (Dr)	3 797,87	3 856,53	1 368,61	1 396,17	1 396,17	1 285,41
— Spain (Pta)	0,00	0,00	1 594,52	1 623,07	1 623,07	1 606,89
— Portugal (Esc)	5 560,85	5 615,85	3 504,20	3 554,26	3 554,26	3 510,69

ANNEX II

Aids to colza and rape seed 'double zero'

(amounts per 100 kg)

	Current 5	1st period 6	2nd period 7 (1)	3rd period 8 (1)	4th period 9 (1)	5th period 10 (1)
1. Gross aids (ECU):						
— Spain	0,000	0,016	12,006	12,250	12,250	12,250
— Portugal	28,908	29,176	18,976	19,220	19,220	19,220
— Other Member States	21,938	22,206	12,006	12,250	12,250	12,250
2. Final aids:						
Seed harvested and processed in:						
— Federal Republic of Germany (DM)	51,65	52,28	28,26	28,84	28,84	28,84
— Netherlands (Fl)	58,19	58,90	31,85	32,49	32,49	32,49
— BLEU (Bfrs/Lfrs)	1 065,23	1 078,24	582,97	594,81	594,81	594,81
— France (FF)	173,21	175,33	94,79	96,72	96,72	96,72
— Denmark (Dkr)	197,00	199,41	107,81	110,00	110,00	110,00
— Ireland (£ Irl)	19,279	19,514	10,551	10,765	10,765	10,765
— United Kingdom (£)	16,881	17,094	9,073	9,267	9,267	9,260
— Italy (Lit)	38 643	39 115	21 148	21 578	21 578	21 515
— Greece (Dr)	4 355,13	4 413,79	1 925,87	1 953,43	1 953,43	1 842,67
— Spain (Pta)	91,23	130,29	1 976,76	2 005,31	2 005,31	1 989,13
— Portugal (Esc)	6 082,54	6 137,54	4 025,89	4 075,95	4 075,95	4 032,38

(1) Amount fixed provisionally, pending and subject to the setting of the prices and related measures and of the application of the maximum guaranteed quantity arrangements for the 1991/92 marketing year, conforming in particular:

- to the Commission's proposals for the 1991/92 marketing year as regards the target price, the monthly increases, the reduction for rape seed other than 'double zero' and the arrangements applying to rape seed harvested in Spain;
- to the adjustment resulting from the maximum guaranteed quantity arrangements and that of the agricultural conversion rates applied for the 1990/91 marketing year.

ANNEX III

Aids to sunflower seed

(amounts per 100 kg)

	Current 5	1st period 6	2nd period 7	3rd period 8 (1)	4th period 9 (1)
1. Gross aids (ECU):					
— Spain	29,423	29,117	28,914	21,907	21,907
— Portugal	38,376	38,076	37,876	29,038	29,038
— Other Member States	26,136	25,836	25,636	16,798	16,798
2. Final aids:					
(a) Seed harvested and processed in (2):					
— Federal Republic of Germany (DM)	61,53	60,82	60,35	39,55	39,55
— Netherlands (Fl)	69,33	68,53	68,00	44,56	44,56
— BLEU (Bfrs/Lfrs)	1 269,07	1 254,50	1 244,79	815,65	815,65
— France (FF)	206,36	203,99	202,41	132,63	132,63
— Denmark (Dkr)	234,70	232,00	230,21	150,84	150,84
— Ireland (£ Irl)	22,968	22,704	22,528	14,762	14,762
— United Kingdom (£)	20,145	19,907	19,748	12,782	12,782
— Italy (Lit)	46 037	45 509	45 157	29 589	29 589
— Greece (Dr)	5 269,21	5 180,56	5 094,26	2 884,02	2 884,02
— Portugal (Esc)	8 058,06	7 996,50	7 955,47	6 129,66	6 129,66
(b) Seed harvested in Spain and processed:					
— in Spain (Pta)	4 611,75	4 567,21	4 536,97	3 494,48	3 494,48
— in another Member State (Pta)	4 671,96	4 628,23	4 598,55	3 569,19	3 569,19

(1) Amount fixed provisionally, pending and subject to the setting of the prices and related measures and of the application of the maximum guaranteed quantity arrangements for the 1991/92 marketing year, conforming in particular with:

— the Commission's proposals for the 1991/92 marketing year as regards the target price, the monthly increases, the reduction for rape seed other than 'double zero' and the arrangements applying to rape seed harvested in Spain;

— the adjustment resulting from the maximum guaranteed quantity arrangements and the agricultural conversion rates applied for the 1990/91 marketing year.

(2) For seed harvested in Member States other than Spain and processed in Spain, the amounts shown in 2 (a) to be multiplied by 1,0186140.

ANNEX IV

Exchange rate of the ecu to be used for converting final aids into the currency of the processing country when the latter is a country other than the country of production

(value of ECU 1)

	Current 5	1st period 6	2nd period 7	3rd period 8	4th period 9	5th period 10
DM	2,061800	2,060090	2,058680	2,057260	2,057260	2,054170
Fl	2,320300	2,318810	2,317430	2,315920	2,315920	2,312220
Bfrs/Lfrs	42,374000	42,334700	42,311699	42,281800	42,281800	42,212900
FF	6,974370	6,969750	6,965250	6,962110	6,962110	6,948580
Dkr	7,877510	7,877160	7,876400	7,875540	7,875540	7,871730
£Irl	0,769984	0,770043	0,769797	0,770150	0,770150	0,770487
£	0,693808	0,694960	0,695682	0,696294	0,696294	0,697573
Lit	1 525,87	1 527,35	1 529,01	1 530,63	1 530,63	1 536,27
Dr	225,17900	227,00800	229,13700	230,99400	230,99400	236,70000
Esc	178,84200	178,96800	179,18100	179,65500	179,65500	181,73300
Pta	127,25100	127,60700	127,91500	128,21300	128,21300	128,90000

COMMISSION REGULATION (EEC) No 1294/91

of 16 May 1991

altering the import levies on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 14 (4) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽³⁾, as last amended by Regulation (EEC) No 1806/89⁽⁴⁾, and in particular Article 12 (4) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽⁵⁾, as last amended by Regulation (EEC) No 2205/90⁽⁶⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on products processed from cereals and rice were fixed by Commission Regulation (EEC) No 1101/91⁽⁷⁾;

Whereas Council Regulation (EEC) No 1906/87⁽⁸⁾ amended Council Regulation (EEC) No 2744/75⁽⁹⁾ as regards products falling within CN codes 2302 10, 2302 20, 2302 30 and 2302 40;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- (¹) OJ No L 281, 1. 11. 1975, p. 1.
(²) OJ No L 353, 17. 12. 1990, p. 23.
(³) OJ No L 166, 25. 6. 1976, p. 1.
(⁴) OJ No L 177, 24. 6. 1989, p. 1.
(⁵) OJ No L 164, 24. 6. 1985, p. 1.
(⁶) OJ No L 201, 31. 7. 1990, p. 9.
(⁷) OJ No L 110, 1. 5. 1991, p. 37.
(⁸) OJ No L 182, 3. 7. 1987, p. 49.
(⁹) OJ No L 281, 1. 11. 1975, p. 65.

— in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

— for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 15 May 1991;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas the levy on the basic product as last fixed differs from the average levy by more than ECU 3,02 per tonne of basic product; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 1579/74⁽¹⁰⁾, as last amended by Regulation (EEC) No 1740/78⁽¹¹⁾, the levies at present in force must therefore be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products processed from cereals and rice covered by Regulation (EEC) No 2744/75 as fixed in the Annex to Regulation (EEC) No 1101/91 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 17 May 1991.

(¹⁰) OJ No L 168, 25. 6. 1974, p. 7.

(¹¹) OJ No L 202, 26. 7. 1978, p. 8.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 16 May 1991 altering the import levies on products processed from cereals and rice

(ECU/tonne)

CN code	Import levies	
	ACP or OCT	Third countries (other than ACP or OCT) (*)
1102 90 90	148,21	151,23
1103 19 90	148,21	151,23
1103 29 90	148,21	151,23
1104 19 99	261,54	267,58
1104 29 19	232,48	235,50
1104 29 39	232,48	235,50
1104 29 99	148,21	151,23

(*) On importation into Portugal the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 14 May 1991

on the legal protection of computer programs

(91/250/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas computer programs are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

Whereas the development of computer programs requires the investment of considerable human, technical and financial resources while computer programs can be copied at a fraction of the cost needed to develop them independently;

Whereas computer programs are playing an increasingly important role in a broad range of industries and computer program technology can accordingly be considered as being of fundamental importance for the Community's industrial development;

Whereas certain differences in the legal protection of computer programs offered by the laws of the Member States have direct and negative effects on the functioning of the common market as regards computer programs and such differences could well become greater as Member States introduce new legislation on this subject;

Whereas existing differences having such effects need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the common market to a substantial degree need not be removed or prevented from arising;

Whereas the Community's legal framework on the protection of computer programs can accordingly in the first instance be limited to establishing that Member States should accord protection to computer programs under copyright law as literary works and, further, to establishing who and what should be protected, the exclusive rights on which protected persons should be able to rely in order to authorize or prohibit certain acts and for how long the protection should apply;

Whereas, for the purpose of this Directive, the term 'computer program' shall include programs in any form, including those which are incorporated into hardware; whereas this term also includes preparatory design work leading to the development of a computer program provided that the nature of the preparatory work is such that a computer program can result from it at a later stage;

Whereas, in respect of the criteria to be applied in determining whether or not a computer program is an original work, no tests as to the qualitative or aesthetic merits of the program should be applied;

⁽¹⁾ OJ No C 91, 12. 4. 1989, p. 4; and

OJ No C 320, 20. 12. 1990, p. 22.

⁽²⁾ OJ No C 231, 17. 9. 1990, p. 78; and Decision of 17 April 1991, yet published in the Official Journal).

⁽³⁾ OJ No C 329, 30. 12. 1989, p. 4.

Whereas the Community is fully committed to the promotion of international standardization ;

Whereas the function of a computer program is to communicate and work together with other components of a computer system and with users and, for this purpose, a logical and, where appropriate, physical interconnection and interaction is required to permit all elements of software and hardware to work with other software and hardware and with users in all the ways in which they are intended to function ;

Whereas the parts of the program which provide for such interconnection and interaction between elements of software and hardware are generally known as 'interfaces' ;

Whereas this functional interconnection and interaction is generally known as 'interoperability' ; whereas such interoperability can be defined as the ability to exchange information and mutually to use the information which has been exchanged ;

Whereas, for the avoidance of doubt, it has to be made clear that only the expression of a computer program is protected and that ideas and principles which underlie any element of a program, including those which underlie its interfaces, are not protected by copyright under this Directive ;

Whereas, in accordance with this principle of copyright, to the extent that logic, algorithms and programming languages comprise ideas and principles, those ideas and principles are not protected under this Directive ;

Whereas, in accordance with the legislation and jurisprudence of the Member States and the international copyright conventions, the expression of those ideas and principles is to be protected by copyright ;

Whereas, for the purposes of this Directive, the term 'rental' means the making available for use, for a limited period of time and for profit-making purposes, of a computer program or a copy thereof ; whereas this term does not include public lending, which, accordingly, remains outside the scope of this Directive ;

Whereas the exclusive rights of the author to prevent the unauthorized reproduction of his work have to be subject to a limited exception in the case of a computer program to allow the reproduction technically necessary for the use of that program by the lawful acquirer ;

Whereas this means that the acts of loading and running necessary for the use of a copy of a program which has been lawfully acquired, and the act of correction of its errors, may not be prohibited by contract ; whereas, in the absence of specific contractual provisions, including when a copy of the program has been sold, any other act necessary for the use of the copy of a program may be

performed in accordance with its intended purpose by a lawful acquirer of that copy ;

Whereas a person having a right to use a computer program should not be prevented from performing acts necessary to observe, study or test the functioning of the program, provided that these acts do not infringe the copyright in the program ;

Whereas the unauthorized reproduction, translation, adaptation or transformation of the form of the code in which a copy of a computer program has been made available constitutes an infringement of the exclusive rights of the author ;

Whereas, nevertheless, circumstances may exist when such a reproduction of the code and translation of its form within the meaning of Article 4 (a) and (b) are indispensable to obtain the necessary information to achieve the interoperability of an independently created program with other programs ;

Whereas it has therefore to be considered that in these limited circumstances only, performance of the acts of reproduction and translation by or on behalf of a person having a right to use a copy of the program is legitimate and compatible with fair practice and must therefore be deemed not to require the authorization of the right-holder ;

Whereas an objective of this exception is to make it possible to connect all components of a computer system, including those of different manufacturers, so that they can work together ;

Whereas such an exception to the author's exclusive rights may not be used in a way which prejudices the legitimate interests of the rightholder or which conflicts with a normal exploitation of the program ;

Whereas, in order to remain in accordance with the provisions of the Berne Convention for the Protection of Literary and Artistic Works, the term of protection should be the life of the author and fifty years from the first of January of the year following the year of his death or, in the case of an anonymous or pseudonymous work, 50 years from the first of January of the year following the year in which the work is first published ;

Whereas protection of computer programs under copyright laws should be without prejudice to the application, in appropriate cases, of other forms of protection ; whereas, however, any contractual provisions contrary to Article 6 or to the exceptions provided for in Article 5 (2) and (3) should be null and void ;

Whereas the provisions of this Directive are without prejudice to the application of the competition rules under Articles 85 and 86 of the Treaty if a dominant supplier refuses to make information available which is necessary for interoperability as defined in this Directive ;

Whereas the provisions of this Directive should be without prejudice to specific requirements of Community law already enacted in respect of the publication of interfaces in the telecommunications sector or Council Decisions relating to standardization in the field of information technology and telecommunication ;

Whereas this Directive does not affect derogations provided for under national legislation in accordance with the Berne Convention on points not covered by this Directive,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Object of protection

1. In accordance with the provisions of this Directive, Member States shall protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. For the purposes of this Directive, the term 'computer programs' shall include their preparatory design material.

2. Protection in accordance with this Directive shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive.

3. A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection.

Article 2

Authorship of computer programs

1. The author of a computer program shall be the natural person or group of natural persons who has created the program or, where the legislation of the Member State permits, the legal person designated as the rightholder by that legislation. Where collective works are recognized by the legislation of a Member State, the person considered by the legislation of the Member State to have created the work shall be deemed to be its author.

2. In respect of a computer program created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

3. Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the program so created, unless otherwise provided by contract.

Article 3

Beneficiaries of protection

Protection shall be granted to all natural or legal persons eligible under national copyright legislation as applied to literary works.

Article 4

Restricted Acts

Subject to the provisions of Articles 5 and 6, the exclusive rights of the rightholder within the meaning of Article 2, shall include the right to do or to authorize :

- (a) the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole. Insofar as loading, displaying, running, transmission or storage of the computer program necessitate such reproduction, such acts shall be subject to authorization by the rightholder ;
- (b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program ;
- (c) any form of distribution to the public, including the rental, of the original computer program or of copies thereof. The first sale in the Community of a copy of a program by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the program or a copy thereof.

Article 5

Exceptions to the restricted acts

1. In the absence of specific contractual provisions, the acts referred to in Article 4 (a) and (b) shall not require authorization by the rightholder where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction.

2. The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract insofar as it is necessary for that use.

3. The person having a right to use a copy of a computer program shall be entitled, without the authorization of the rightholder, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

Article 6

Decompilation

1. The authorization of the rightholder shall not be required where reproduction of the code and translation of its form within the meaning of Article 4 (a) and (b) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

- (a) these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorized to do so;
- (b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in subparagraph (a); and
- (c) these acts are confined to the parts of the original program which are necessary to achieve interoperability.

2. The provisions of paragraph 1 shall not permit the information obtained through its application:

- (a) to be used for goals other than to achieve the interoperability of the independently created computer program;
- (b) to be given to others, except when necessary for the interoperability of the independently created computer program; or
- (c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

3. In accordance with the provisions of the Berne Convention for the protection of Literary and Artistic Works, the provisions of this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with a normal exploitation of the computer program.

Article 7

Special measures of protection

1. Without prejudice to the provisions of Articles 4, 5 and 6, Member States shall provide, in accordance with

their national legislation, appropriate remedies against a person committing any of the acts listed in subparagraphs (a), (b) and (c) below:

- (a) any act of putting into circulation a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
- (b) the possession, for commercial purposes, of a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
- (c) any act of putting into circulation, or the possession for commercial purposes of, any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of any technical device which may have been applied to protect a computer program.

2. Any infringing copy of a computer program shall be liable to seizure in accordance with the legislation of the Member State concerned.

3. Member States may provide for the seizure of any means referred to in paragraph 1 (c).

Article 8

Term of protection

1. Protection shall be granted for the life of the author and for fifty years after his death or after the death of the last surviving author; where the computer program is an anonymous or pseudonymous work, or where a legal person is designated as the author by national legislation in accordance with Article 2 (1), the term of protection shall be fifty years from the time that the computer program is first lawfully made available to the public. The term of protection shall be deemed to begin on the first of January of the year following the abovementioned events.

2. Member States which already have a term of protection longer than that provided for in paragraph 1 are allowed to maintain their present term until such time as the term of protection for copyright works is harmonized by Community law in a more general way.

Article 9

Continued application of other legal provisions

1. The provisions of this Directive shall be without prejudice to any other legal provisions such as those concerning patent rights, trade-marks, unfair competition, trade secrets, protection of semi-conductor products or the law of contract. Any contractual provisions contrary to Article 6 or to the exceptions provided for in Article 5 (2) and (3) shall be null and void.

2. The provisions of this Directive shall apply also to programs created before 1 January 1993 without prejudice to any acts concluded and rights acquired before that date.

*Article 10***Final provisions**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993.

When Member States adopt these measures, the latter shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field governed by this Directive.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 14 May 1991.

For the Council

The President

J. F. POOS

Information concerning the date of entry into force of the Cooperation Agreement between the European Economic Community and the Republic of Chile ⁽¹⁾

The exchange of instruments giving notice of completion of the procedures necessary for the entry into force of the aforementioned Agreement, signed in Rome on 20 December 1990, having been concluded on 30 April 1991, this Agreement entered into force, in accordance with Article 21 thereof, on 1 May 1991.

⁽¹⁾ OJ No L 79, 26. 3. 1991, p. 1.

COMMISSION

COMMISSION DECISION

of 12 April 1991

declaring the compatibility with the common market of a concentration

(Case No IV/MO42 — Alcatel/Telettra)

Council Regulation (EEC) No 4064/89

(Only the English text is authentic)

(91/251/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertaking⁽¹⁾, and in particular Article 8 (2) thereof,

Having regard to the Commission Decision of 21 January 1991 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the obligations proposed by the Commission,

After consulting the Advisory Committee on Concentrations⁽²⁾,

Whereas :

I. FACTS

The nature of the proceeding

- (1) This proceeding concerns a proposed concentration which was notified on 10 December 1990 pursuant to Article 4 of Council Regulation (EEC) No 4064/89, consisting of the acquisition by Alcatel NV (Alcatel) from Fiat SpA (Fiat) of a controlling interest of 69,2 % of the shares of Telettra SpA (Telettra). Telettra will in turn acquire 100 % of Alcatel Face SpA, which is a subsidiary of Alcatel. Fiat will still own 25,4 % of Telettra. The balance of the shares in Telettra are currently owned by the Spanish telecommunications operator, Telefonica de España (Telefonica).

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1, rectified version OJ No L 257, 21. 9. 1990, p. 13.

⁽²⁾ OJ No C 127, 17. 5. 1991, p. 2.

The parties

- (2) Alcatel is 70 % owned by Alcatel Alsthom Compagnie Générale d'Electricité (Alcatel Alsthom), formerly known as CGE. Alcatel is principally a supplier of telecommunications systems and equipment, and in 1989 had a worldwide turnover of ECU 12,8 billion. Alcatel Alsthom had a consolidated worldwide turnover of ECU 20,7 billion in 1989, the balance deriving mainly from the energy and transportation, nuclear, electrical engineering, and batteries sectors. The Community-wide turnover of Alcatel Alsthom in 1989 was ECU 16,5 billion. Not more than two-thirds was achieved in any one Member State.
- (3) Telettra is principally a supplier of telecommunications systems and equipment. In 1989, it had a worldwide turnover of ECU 1,1 billion, ECU 0,95 billion of which arising in the Community. Not more than two-thirds of its Community-wide turnover was achieved in any one Member State.

The context of the agreement

- (4) The agreement on the acquisition of control in Telettra is one of the components of the 'accord cadre' entered into between Fiat and Alcatel Alsthom. The other components of the 'accord cadre' are :
- the acquisition by Magneti Marelli, a subsidiary of Fiat, of a controlling interest in Alcatel Alsthom's batteries subsidiary, CEAG. This proposed concentration, which is subject to completion of the Alcatel/Telettra agreement, has been notified and is being dealt with separately under Case No IV/M043⁽³⁾,

⁽³⁾ OJ No C 315, 14. 12. 1990, p. 14.

- the planned acquisition of a controlling interest in Fiat's railway equipment subsidiary, Fiat Ferroviaria, by GEC-Alsthom which is jointly controlled by GEC and Alcatel Alsthom,
- the creation of a European holding company which will be jointly owned by Fiat and Alcatel Alsthom, with the intention of developing initiatives of mutual interest in research and development.

The various components of the 'accord cadre' fall to be separately assessed under Regulation (EEC) No 4064/89 or Article 85 of the EEC Treaty.

The affected product markets

- (5) Four product markets within the telecommunications systems and equipment sector are affected by the concentration, these being public switching, line transmission systems, microwave systems, and private switching.

These four markets represent 72 % of the total telecommunications equipment market which had a value of ECU 16,7 billion in the Community in 1989, including other telecommunications equipment areas such as radiotelephony, subsets, earth stations and telecommunications cables.

In terms of value, the most important telecommunications market is the market for public switching with a value of ECU 5,6 billion in 1989 which represents 34 % of the total telecommunications equipment market. In the same year, the market for line transmission systems had a value of ECU 3,9 billion (23 %), private switching a value of ECU 2 billion (12 %), and microwave systems a value of ECU 0,6 billion (3 %).

- (6) Market shares of the parties and of their main competitors in these product markets in 1989 are reproduced in the Annex⁽¹⁾.

The public telecommunications equipment markets

- (7) The telecommunications equipment supply industry is characterized by a steadily increasing and very high level of R&D expenditure, due to the increasing software content of telecommunications

products and the shortening of product life cycles. Technically, Telettra fits in well with Alcatel's existing product base, and the acquisition gives Alcatel access to Telettra's cross-connect technology.

- (8) Public switching, line transmission equipment and microwave equipment are largely public telecommunications equipment markets where the telecommunications operators are the only, or by far the most important, customers. The Spanish telecommunications operator, Telefonica, for example, is the only buyer in Spain of public switches, and buys 90 % of the line transmission equipment and currently 60 % of the microwave equipment in that Member State.

- (9) Public telecommunications operators in principle operate diversified supplier policies which aim to strike a balance between creating and maintaining competition between suppliers on the one hand, and minimising costs arising from product differences on the other hand. For public switching, for example, it is generally not considered feasible to have more than two or three suppliers because of the high cost and technical complexity of this type of equipment. For transmission equipment, in general terms, it is usual to have more suppliers, say three to five, but there would still be a practical limit to the number which could be sustained.

- (10) Procurement practices vary from one operator to another, and from one category of equipment to another, but are in principle based on a combination of negotiated contracts and tenders.

- (11) Procurement practices of the Community telecommunications operators are evolving. Traditionally, in all Member States public networks were operated by State-owned telecommunications authorities which gave their orders for telecommunications equipment to a small group of national suppliers. This was often accompanied by specific national technical standards, which created adaptation costs for non-domestic suppliers.

- (12) The actual pace of change in procurement policy varies quite significantly from one Member State to another. In this context, a process of liberalization and deregulation of the telecommunications sector has been initiated in the framework of the achievement of the single market. The Commission's directives on liberalization of telecommunications services, for example, aim to create more competition by breaking up the monopolies of the network

⁽¹⁾ This Annex constitutes business secrets which have been deleted in accordance with Article 20 (2) of Regulation (CEE) No 4064/89 for publication.

operators in the provision of services. On the supply side, directives on public procurement and on mutual recognition of terminal type approval aim to open markets to competitors from other Member States. Furthermore, there are efforts to achieve a Community-wide standardization of telecommunications equipment in the framework of European Telecommunications Standards Institute (ETSI).

- (13) It is anticipated that the application of the provisions of Council Directive 90/531/EEC⁽¹⁾ on public procurement will contribute to further breaking down the traditional nationally-based buying policies of the telecommunications operators. Member States have to implement this Directive by 1 January 1993, with the exception of Spain, which must implement it by 1 January 1996, and Greece and Portugal by 1 January 1998.
- (14) As to standardization of products in the markets under consideration, ETSI, which was set up in 1987, plans to issue 22 standards and 11 technical reports in the transmission area in its work programme for 1990 to 1993. Adoption of ETSI standards by the telecommunications operators in this area is voluntary for the time being, and commitment to this varies. However, from the date of implementation of Directive 90/531/EEC, use of European Telecommunications Standards (ETS) by telecommunications operators will be mandatory in the specification of their calls to tender.
- (15) The extent of existing national specifications varies from one Member State to another and according to product. National specifications for transmission equipment for example are low or non-existent in Spain but quite significant in Italy.

The transmission markets in Spain

- (16) Because of the significance of Alcatel and Telettra as competitors for the supply of line transmission equipment in Spain, the Commission has carried out a detailed enquiry as to the structural impact of the concentration in this Member State.
- (17) Spain is at present the fastest growing telecommunications market in the Community, with overall growth expected to continue at around 5 % per annum in real terms for the next five years because

of the modernization programme under way. In 1989 the value of the line transmission equipment market was ECU 531 million (13 % of the total Community market) and that of the microwave equipment market ECU 117 million (20 % of the Community market). Against the overall trend in the other telecommunications equipment markets, the microwave equipment market is generally declining.

Telefonica's ability to react to the concentration

- (18) The telecommunications operator most concerned by the concentration, Telefonica, has raised no objection. Like other telecommunications operators, Telefonica has a diversified supplier policy so as not to be overly dependent on any one supplier. In its initial reply to the Commission's enquiries, Telefonica stated that it considered that the concentration between Alcatel and Telettra would not affect this policy.
- (19) In response to the Commission's subsequent enquiries Telefonica has specified that its policy of diversified transmission equipment purchasing is based, *inter alia*, on the following principles:
- orders are placed on the basis of annual or two-yearly programmes and product suppliers are aware of invitations to tender for products. The factors taken into account in awarding contracts are quality, the delivery period, reliability and price,
 - Telefonica is willing both to arrange any contacts that suppliers wish to have and to provide them with the information they deem necessary in order to be able to tender on an equal footing,
 - new or potential suppliers may freely request technical approval of their products. Products which have successfully undergone technical testing are included in Telefonica's catalogue of suitable products which can be purchased. The ultimate choice of products is made in accordance with a combination of parameters, of which technical performance is one,
 - an industrial presence in Spain will not henceforth be a decisive factor; it will, however, be necessary to maintain back-up in the country,
 - the company's strategic plan for 1991 to 95 provides among other things for the opening-up of the market to new suppliers.

⁽¹⁾ OJ No L 297, 29. 10. 1990, p. 1.

- (20) Telefonica has minority shareholdings in some of its suppliers. In particular, it has a shareholding of 21 % in Alcatel Standard Electrica SA which is a subsidiary of Alcatel, a shareholding of 10 % in Telettra Española SA, which is a subsidiary of Telettra, and a shareholding of 5,4 % in Telettra itself.

- (21) An agreement which is conditional on the acquisition of Telettra by Alcatel has already been entered into whereby Alcatel will acquire Telefonica's 5,4 % shareholding in Telettra. The same agreement contains a provision whereby Alcatel has a call option to acquire Telefonica's shareholding in Telettra Española SA.

Furthermore, Telefonica has stated that there is no longer a strategic reason to retain minority shareholdings in its suppliers, and that it is willing to consider suitable offers.

- (22) Accordingly, on 6 February 1991, Alcatel made the following commitments to the Commission :

- to acquire Telefonica's 5,4 % shareholding in Telettra when control in Telettra is acquired,
- to exercise the call option to acquire the 10 % shareholding of Telefonica in Telettra Española SA,
- to enter immediately into good faith negotiations with Telefonica so as to acquire at a fair price Telefonica's 21 % shareholding in Alcatel Standard Electrica SA.

Competitors' ability to react to the concentration

- (23) American Telephone and Telegraph Company (AT&T) is the world's leading line transmission equipment supplier. It conducts its business in Spain through a joint venture company, AT&T-NS España, which was set up in 1987. This company is 51 % owned by AT&T and 49 % owned by Amper SA. The joint venture's first transmission sales were in 1988, with strong increases following in 1989 and 1990. AT&T-NS España today offers the full range of line transmission products in Spain.

AT&T considers that it is possible for it to sell a higher than anticipated level of transmission equipment in Spain. AT&T-NS España has the ability and spare capacity to do this, and AT&T could

supply products from other subsidiaries into this market.

AT&T does not currently sell microwave transmission products in Spain. AT&T-NS España is said to continue to pursue public tender opportunities for microwave radio equipment.

- (24) Telefonaktiebolaget LM Ericsson (Ericsson) is a Swedish company which, because of its relatively small domestic market base, has always been an active international competitor. Almost 50 % of its overall turnover now arises in Europe, excluding Sweden. Ericsson is already established in Spain. Although principally a supplier of public switching equipment to Telefonica, it also supplies digital transmission equipment products. Ericsson considers that it could strengthen the existing product offering, and easily expand local capacity if necessary, or supply products from other subsidiaries.

Ericsson currently has limited sales of a small capacity short distance radio link in the microwave equipment market in Spain. It states that it is intended to develop its position in this Member State and that essentially there is no product adaptation requirement for further development.

- (25) Siemens currently has only a marginal position in the transmission markets in Spain, accounted for by sales of around ECU 10 million of microwave equipment in 1989. Siemens is the third largest telecommunications equipment supplier worldwide, just behind Alcatel and AT&T, and is therefore a significant potential competitor for the transmission markets in Spain.

In response to the Commission's enquiries, Siemens considers that there are currently two important trade barriers to the Spanish markets. These are the vertical integration of Telefonica with suppliers, and the fact that Directive 90/531/EEC on public procurement does not have to be applied in Spain until 1996.

- (26) Alcatel in its notification cites the possibility of significant entry into the Community's markets by other large companies, notably Northern Telecom of Canada, and Fujitsu and NEC of Japan. For these companies however, the costs of product adaptation are substantial, since there are currently substantial differences in technical specifications.

II. LEGAL ASSESSMENT

Concentration

- (27) The notified operation is a concentration within the meaning of Article 3 (1) (b) of Regulation (EEC) No 4064/89 since by acquiring 69,2 % of the shares in Telettra, Alcatel will acquire control of Telettra.

Community dimension

- (28) The thresholds of Article 1 (2) of Regulation (EEC) No 4064/89 are met since the combined aggregate worldwide turnover of Alcatel Alsthom and Telettra is more than ECU 5 billion and the aggregate Community-wide turnover of each is more than ECU 250 million, of which not more than two-thirds is achieved within one and the same Member State. The concentration therefore has a Community dimension.

Compatibility with the common market

(a) Relevant product markets

- (29) The concentration leads to an increase in market shares in four markets: public switching, line transmission equipment, microwave equipment and private switching. Each of these markets is a relevant product market for the purposes of assessment under Regulation (EEC) No 4064/89.

(b) Geographical markets

- (30) It is considered that up to now the telecommunications markets in the Community have been largely fragmented in national markets. The main reasons for this have been, *inter alia*:

- the operation of the public networks by national telecommunications authorities which have traditionally given their orders for telecommunications equipment to a small group of national suppliers, and
- different national standards which created high costs of adaptation for non-domestic suppliers.

This situation is evolving as described in recitals 7 to 15 above.

- (31) In very broad terms, standardisation is progressing faster for transmission equipment than for public switching for example. Furthermore, the replacement of analogue technology by digital will further break down some of the existing technical barriers in the medium to long term.
- (32) Although it is anticipated that in the medium term the technical barriers will become less significant, the actual pace of change of commercial policy of

the network operators varies substantially from one Member State to another.

- (33) The combination of Alcatel and Telettra has a significant impact on competition only on the transmission markets in Spain. It is sufficient therefore to examine whether the Spanish markets have to be considered as relevant geographical markets.

- (34) The most significant structural characteristics up to now have been that:

- the Spanish telecommunications operator, Telefonica, traditionally purchased from locally established suppliers, although this has started to change
- there is no legal obligation in Spain for the next five years to apply the procurement procedures provided for in Directive 90/531/EEC on public procurement,
- there are vertical links between Telefonica and its major equipment suppliers and in particular Alcatel and Telettra, by means of minority shareholdings. Vertical links between telecommunications operators and their suppliers can distort normal conditions of competition by giving those suppliers a privileged position on the market. This can be the case even where telecommunications operators only have minority shareholdings, since such links would normally put other suppliers without such links at a disadvantage.

- (35) Given the current structural characteristics of the transmission markets in Spain, it is concluded that Spain has to be considered as a separate relevant geographical market, for the purpose of assessing whether the concentration could give rise to a dominant position which would significantly impede effective competition within the meaning of Article 2 (2) of Regulation (EEC) No 4064/89.

(c) Impact of the proposed concentration

Overall impact

- (36) For public switching, there is an impact only in Italy, where Alcatel and Telettra together would have 21 % of the market based on 1989 figures. Since Italtel is by far the leading competitor on the Italian market, having maintained a market share of 50 % for the last few years, the creation of a dominant position for the combined entity in this product market by the concentration is excluded, even if Italy were to be considered the relevant geographic market.

For private switching, Telettra is not a significant competitor in any Member State since it has a marginal presence only on the Italian market. The concentration produces no significant structural effect on either the Italian or wider Community market.

Accordingly, only the impact of the concentration on the markets for line transmission equipment and microwave equipment (the transmission markets) in Spain has to be considered.

Transmission markets in Spain

- (37) On the basis of the actual market shares of Alcatel and Telettra in 1989, the concentration leads to very high combined market shares on the transmission markets in Spain for the new entity, because the two companies are the two current principal suppliers to Telefonica.

The figures are as follows :

- line transmission equipment: Alcatel 40 %, Telettra 41 %,
- microwave equipment: Alcatel 18 %, Telettra 65 %.

Contestability of the transmission markets

- (38) A very high share of any market could indicate that a dominant position exists. Such an indication in the case of a supplier may nevertheless be countered, for example by the buying power of a monopsonistic purchaser.

In the present case, the high market shares of Alcatel and Telettra in the transmission markets in Spain result from Telefonica's choice of these companies as its main suppliers. This choice was however made on the basis of Alcatel and Telettra being active competitors in the past.

- (39) Since Telefonica has maintained a diversified purchasing policy up to now, it is not probable that the new combined entity will sustain the same market share as achieved by the parties as competitors.
- (40) It is possible for Telefonica to increase its purchases from other suppliers of transmission equipment in order to prevent any dependence on the new entity.

AT&T is immediately capable of increasing its deliveries across the entire range of line transmission equipment products. AT&T is not yet supplying microwave products in Spain, but AT&NS España

is continuing to pursue some public tender opportunities.

Although Ericsson does not cover the whole range of line transmission products, it is capable of increasing deliveries of digital products, these products being the most important segment for new installations. Ericsson currently has only limited sales of microwave equipment in Spain. It has stated however that it is intended to develop its position in that Member State.

The two principal actual competitors are therefore capable of increasing supply.

- (41) Furthermore, it would seem possible for some competitors not currently present to a significant extent in Spain to become suppliers in the changed environment. Although the procedures envisaged in Directive 90/531/EEC on public procurement do not have to be introduced yet, Telefonica has stated that :

- it is willing both to arrange any contacts that suppliers wish to have and to provide them with the information they deem necessary in order to be able to tender on an equal footing,
- new or potential suppliers may freely request technical approval of their products. Products which have successfully undergone technical testing are included in Telefonica's catalogue of suitable products which can be purchased. The ultimate choice of products is made in accordance with a combination of parameters, of which technical performance is one,
- an industrial presence in Spain will not henceforth be a decisive factor.

- (42) On this basis, there would be no significant barrier from the demand side for strong competitors such as Siemens to enter into Spain. Siemens is already present to some extent in the microwave equipment market.

The technical costs of adaptation do not today in themselves constitute an appreciable barrier to entry for European-based competitors. There is no indication either for the time being that proprietary intellectual property rights could be exploited in such a way as to amount to a barrier to such competitors. Within the framework of standardization in ETSI the Commission has a strong interest in preventing such a barrier emerging.

- (43) Consequently, as to competitors not hitherto based in Europe, such as Northern Telecom, Fujitsu and NEC, it is not necessary to determine whether these are realistic potential competitors in Spain in the foreseeable future in the line transmission

equipment market. It is likely that a technical barrier to entry will remain until the Community's standardization programme comes into effect and Telefonica fully adopts the standards which will be defined by ETSI in this area. The North American and Japanese standards are currently significantly different from those adopted by the various European network operators. Once common European standards are defined and implemented, the necessary minimum volume to justify adaptation may become a more realistic possibility.

Structural links between Telefonica and the parties to the concentration

- (44) In the context of the present case, the participation of Telefonica in the capital of Alcatel and Telettra, given their strong position on the transmission markets in Spain, is considered to amount to a barrier for other competitors.

- (45) Alcatel has entered into a commitment *vis-à-vis* the Commission whereby Alcatel will acquire from Telefonica the minority shareholdings in Telettra and Telettra España SA and will enter into negotiations to acquire from Telefonica the minority shareholding in Alcatel Standard Electrica SA. The vertical links between Telefonica and Telettra will therefore disappear and given Telefonica's willingness to consider appropriate offers, there is a probability that the vertical link between Telefonica and Alcatel will also be removed, given Alcatel's commitment in this respect.

- (46) Alcatel's commitments relate to the removal of a significant structural barrier to the transmission markets in Spain, and it is considered necessary therefore for the Commission to ensure that these commitments are complied with as soon as possible after completion of the concentration by attaching appropriate obligations to its Decision.

(d) Conclusion

- (47) For the reasons outlined above, it appears that competitors of Alcatel and Telettra are capable in the near future of increasing their supply to Telefonica in the transmission markets. Because of its diversified purchasing policy and removal of vertical links with Alcatel and Telettra, it also appears that Telefonica is capable in the near

future of increasing its purchases from other suppliers.

- (48) In these circumstances, it is not considered that the current high market shares of Alcatel and Telettra on the transmission markets in Spain will enable the new entity to behave to an appreciable extent independently of its competitors and main customer.
- (49) The concentration does not therefore create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it,

HAS ADOPTED THIS DECISION :

Article 1

Subject to the obligations defined in Article 2, the proposed concentration between Alcatel and Telettra is declared compatible with the common market.

Article 2

The following obligations are attached to this Decision :

- (a) that Alcatel acquires Telefonica's 5,4 % shareholding in Telettra SpA upon the acquisition of control in Telettra SpA, and that Alcatel informs the Commission when this takes place ;
- (b) that Alcatel exercises its call option to acquire the 10 % shareholding of Telefonica in Telettra Espanola SA as soon as this is possible, and at the latest within 12 months from the acquisition of control in Telettra, and that Alcatel informs the Commission when this takes place ;
- (c) that Alcatel enters immediately into good faith negotiations with Telefonica so as to acquire at a fair price Telefonica's 21,14 % shareholding in Alcatel Standard Electrica SA, within one week of the closing of the agreement with Fiat to acquire Telettra, and that Alcatel informs the Commission when it has done so ;
- that Alcatel informs the Commission as soon as there is a successful outcome,
- where there is no successful outcome within three months, that Alcatel informs the Commission of the progress of the negotiations that are taking place, and updates this information subsequently every three months,

- that Alcatel, in the event of no successful outcome, or no successful outcome after 12 months have elapsed, provides the Commission with full details of the offer being made (including price and conditions) so as to enable the Commission to verify that the negotiations as defined above have been conducted in good faith;

- (d) So as to ensure that the effect of the commitments is not neutralized, that Alcatel shall not sell to Telefonica shares in any company of the Alcatel group which has activities in the Community without prior approval from the Commission until such time as the Commission waives this obligation. This obligation ceases to have effect at the latest on the date of full implementation in Spain of Directive 90/531/EEC, which must take place by 1 January 1996.

Article 3

This Decision is addressed to:

Alcatel NV,
Paris Headquarters SA,
33, rue Emeriau,
F-75015 Paris
and
Telettra SpA,
19 Via E. Cornalia,
I-20124 Milano.

Done at Brussels, 12 April 1991.

For the Commission

Leon BRITTAN

Vice-President